LBCN Development Sdn Bhd & Anor v Pengarah Tanah dan Galian Selangor & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(IM)(NCVC)-371–10 OF 2013

ALIZATUL KHAIR, HAMID SULTAN AND ABANG ISKANDAR JJCA

17 FEBRUARY 2014

Land Law — Acquisition of land — Acquisition of state authority — Acquisition by Land Administrator of Kuala Selangor — Whether acquisition was made mala fide

Tort — Misfeasance in public office — Limits of liability of government — Whether plaintiffs had sustainable cause of action against defendants — Whether actions taken were illegal — Restrictions — Whether liability of government limited by Government Proceedings Act 1965 — Whether claim scandalous, frivolous and vexatious and abuse of process of court

The Land Administrator of Kuala Selangor ('the third defendant') had alienated land to the plaintiffs for a development project. When the development project halted, the third defendant proceeded with the acquisition of the land. The plaintiffs proceeded to challenge the acquisition process by way of judicial proceedings. In addition the plaintiffs filed an action based on misfeasance in public office against the seven defendants. The plaintiffs claimed that the actions taken by the defendants were contrary to s 3 of the Land Acquisition Act 1960 ('Act') and tainted with mala fide. The plaintiffs submitted that the land acquired by the third defendant had been alienated to the seventh defendant, a company owned by the State Government of Selangor ('the sixth defendant'), and that this was in effect a 'land grab' policy by the sixth defendant helmed by Tan Sri Dato' Abdul Khalid bin Ibrahim ('the fifth defendant'). The plaintiffs attempted to demonstrate the purported blatant abuse of power by the fifth defendant to anchor the complaint in misfeasance proceedings. The plaintiffs also averred that the sixth defendant was vicariously liable for the acts of the fourth and fifth defendants. By way of this action the plaintiffs sought, inter alia, a declaration that the actions taken by the defendants were null and void and of no legal effect, and also claimed damages. The defendants responded that the land acquisition was not a 'land grab' policy but a bona fide exercise for public good. The defendants submitted that in consequence of the plaintiffs' failure to develop the land according to the time frame, the land had to be acquired for 'public good'. The defendants further submitted that the tort of misfeasance in public office had

not been made out and was based on suspicion. The trial judge struck out the plaintiffs' claim and hence the present appeal.

Held, dismissing the appeal with costs of RM20,000 to the first to sixth defendants and RM20,000 to the seventh defendant:

(1) In the instant case the 'sting' was on the fifth defendant, a Menteri Besar in his personal capacity. However, the scheme of the Act does not give any powers in a personal capacity in the manner complained of against the fifth defendant. Under s 3 of the Act, acquisition is done by the 'state authority' and the fifth defendant is at the most a mouth piece for the state authority or its organ (see para 13(a)).

(2) In Malaysia, a cause of action of misfeasance in public office is restricted by ss 5 and 6 of the Government Proceedings Act 1965 ('the GPA'). In essence, the GPA limits the liability of the government by providing that if the act of the public officer could not give rise to a public action against the purported officer then the government would not be liable (see para 14).

(3) From the facts of the instant case and taking into consideration the objections and its merits, it was difficult to even fathom how the cause of action could succeed except to say that the action was scandalous, frivolous and vexatious and an abuse of process of court (see para 15).

[Bahasa Malaysia summary

Pentadbir Tanah Kuala Selangor ('defendan ketiga') telah memberi milik tanah kepada plaintif-plaintif untuk projek pembangunan. Apabila projek pembangunan berhenti, defendan ketiga meneruskan dengan pengmabilan tanah tersebut. Plaintif-plaintif meneruskan untk mencabar proses pengambilan tanah tersebut mellaui prosiidng kehakiman. Selanjutnya plaintif-plaintif memfailkan tindakan berdasarkan atas misfeasans dalam pejawat awam terhadap ketujuh-tujuh defendan. Plaintif-plaintif mendakwa bahawa tindakan yang diambil oleh defendan-defendan adalah bertentangan s 3 Akta Pengambilan Tanah 1960 ('Akta') dan dicela dengan mala fide. Plaintif-plaintif berhujah bahawa tanah yang diambil oleh defendan ketiga telah diberi milikan kepada defendan ketujuh, syarikat yang dimiliki oleh Kerajaan Negeri Selangor ('defendan keenam'), dan bahawa ini pada hakikatnya adalah polisi 'land grab' oleh defendan keenam yang dipimpin oleh Tan Sri Dato' Abdul Khalid bin Ibrahim ('defendan kelima'). Plaintif-plaintif mencuba untuk menunjukkan penyalahgunaan kuasa terang-terangan oleh defendan kelima untuk mengukuhkan aduan dalam prosiding misfeasans. Plaintif-plaintif juga berhujah bahawa defendan keenam secara vikarius bertanggungjawab untuk tindakan defendan keempat dan kelima. Melalui tindakan ini plaintif-plaintif memohon, antara lain, perisytiharan bahawa tindakan-tindakan yang diambil oleh defendan-defendan adalah batal dan tak

A sah dan tidak mempunyai kesan undang-undang, dan juga menuntut ganti rugi. Defendan-defendan menjawab bahawa pengambilan tanah tersebut bukan polisi 'land grab' tetapi pelaksanaan bona fide untuk kebaikan orang awam. Defendan-defendan berhujah bahawa akibat kegagalan plaintif-plaintif untuk membangunkan tanah tersebut mengikut tempoh masa, tanah tersebut
B perlu diambil untuk 'public good'. Defendan-defendan selanjutnya berhujah bahawa tort misfeasans dalam pejabat awam tidak dibuat dan berasaskan rasa syak. Hakim perbicaraan membatalkan tuntutan plaintif-plaintif dan maka rayuan ini.

C **Diputuskan**, menolak rayuan dengan kos sebanyak RM20,000 kepada defendan pertama hingga keenam dan RM20,000 kepada defendan ketujuh:

(1) Dalam kes ini 'sting' adalah kea atas defendan kelima, seorang Menteri Besar dalam kapasiti peribadi. Walau bagaimanapun, skim Akta tidak
D memberikan apa-apa kuasa dalam kapasiti peribadi dalam cara yang diadukan terhadap defendan kelima. Di bawah s 3 Akta, pengambilan tanah dibuat oleh 'state authority' dan defendan kelima adalah sekurang-kurangnya wakil untuk pihak berkuasa negeri atau
E organisasinya (lihat perenggan 13(a)).

(2) Di Malaysia, kausa tindakan terhadap misfeasans dalam pejabat awam adalah dihadkan oleh ss 5 dan 6 Akta Prosiding Kerajaan 1965 ('APK'). Pada dasarnya, APK mengehadkan liabiliti kerajaan dengan
F memperuntukkan bahawa jika tindakan pegawai awam tidak akan membangkitkan kepada tindakan awam terhadap pegawai tersebut oleh itu kerajaan tidak akan bertanggungjawab (lihat perenggan 14).

(3) Daripada fakta kes ini dan mengambil kira pertimbangan objektif dan meritnya, adalah sukar untuk menduga bagaimana kausa tindakan boleh
G berjaya kecuali untuk menyatakan bahawa tindakan adalah bersifat skandal, remeh dan menyusahkan dan penyalahgunaan proses mahkamah (lihat perenggan 15).]

Notes

H For cases on acquisition by state authority, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2114–2116.

Cases referred to

I *Bandar Builders Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd)

Common Cause v Union of India [1999] 6 SCC 667, SC (refd)

Three Rivers District Council v Bank of England (No 3) [1996] 3 All ER 558, QBD (refd)

Legislation referred to

Government Proceedings Act 1956 ss 5, 6
Land Acquisition Act 1960 s 3

Appeal from: Civil Suit No 21NCVC-24–02 of 2013 (High Court, Kuala Lumpur)

B Thangaraj (Azad Bashir with him) (Thangaraj & Assoc) for the appellants.
Ahmad Fuad bin Othman (State Assistant Legal Advisor, Selangor) for the first to sixth respondents.
Kamaruzaman M Ariff (Sofiah bt Omar and Nurliza bt Shafien with him) (Kamaruzaman Arif Amran & Chong) for the seventh respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellants appeal against the decision of the learned High Court judge for striking out the writ and statement of claim based on a cause of action in 'tort of misfeasance in public office'. It came up for hearing on 12 December 2013 and on the same day upon hearing, the appeal was dismissed. This is our judgment.

[2] It is essential to note that the learned counsel for the appellants had conceded that the plaintiff's cause of action is based on 'misfeasance in public office' and not on illegality even though illegality is a limb in misfeasance proceeding.

[3] The appellant had filed a lengthy statement of claim running to 118 pages and equally lengthy is the written submission running to 117 pages. The real issue is whether the appellant has a sustainable cause of action, in misfeasance in public office, taking into consideration the objections of the respondents'.

BRIEF FACTS

[4] The appellants have brought the action against the seven defendants namely: (a) the first defendant, Pengarah Tanah dan Galian Selangor; (b) the second defendant, Pendaftar Hakmilik Negeri Selangor; (c) the third defendant, Pentadbir Tanah Kuala Selangor; (d) the fourth defendant, Menteri Besar Negeri Selangor; (e) the fifth defendant, Tan Sri Dato' Abdul Khalid bin Ibrahim; (f) the sixth defendant, Kerajaan Negeri Selangor; (g) the seventh defendant, Menteri Besar Selangor (Pemerbadanan).

[5] The appellants have been alienated land by the third defendant for a development project in Ijok Selangor. The state authorities had agreed with the

development proposal with conditions. The appellants had started development in 2000. The project came to a halt in 2008. In consequence, the third defendant in 2009 proceeded with acquisition of the land and the said land was acquired under the Land Acquisition Act 1960, with respective awards as compensation granted to the appellants. The appellants were not satisfied with the acquisition process and/or the awards and have proceeded to challenge by way of judicial proceedings and is now a subject of appeal to the Court of Appeal. Two of the judgments of Justice Vernon Ong dated 22 February 2013 and 24 July 2013 may be relevant to understand the factual matrix of the case and the objections of the respondents.

[6] The principal objections of the respondents were premised on rejudicata and multiplicity of proceedings. And the assertion that the complaint of the appellants must be ventilated by judicial review proceedings, etc. and also the fact that the appellants' action is time barred. In addition the respondents also complain that ss 5 and 6 of the Government Proceedings Act 1956 ('GPA 1956') have not been met and also the fact that compensation had already been paid to the appellants and in consequence the present action amount to unjust enrichment.

[7] It was the contention of the appellants that it was only subsequent to the acquisition that they realised that the land acquired was alienated to the seventh defendant, a company owned by the sixth defendant. They averred it was a 'land grab' policy by the sixth defendant helmed by the fifth defendant, and it was done without abiding to the strict provision of law ie s 3 of the Land Acquisition Act 1960. The said section reads as follows:

Acquisition of land

3(1) The State Authority may acquire any land which is needed

(a) for any public purpose;

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

(c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

(2) An application for the acquisition of any land under paragraph (1)(b) or (c) shall be made in writing to the Land Administrator in the form as prescribed in the Rules made under this Act.

(3) Any application made under paragraph (1)(b) or (c) shall be accompanied by-

(a) the project proposal;

(b) the layout and land acquisition plan;

(c) the preliminary Government valuation report of the land to be acquired; and

(d) such fee and deposit as may be prescribed in the Rules made under this Act:

Provided that the Sate Authority may grant partial or total exemption from the payment of any fee to any Federal or State corporation expressly empowered to hold land under any written law and where the acquisition is for the purpose of public utility.

(4) Subject to subsection (6), the Land Administrator shall transmit the application and the accompanying documents to the State Economic Planning Unit or, in the case of an application made in the Federal Territory of Kuala Lumpur, to the Committee if he is satisfied that they are in order.

(5) The Land Administrator may reject any application which does not comply with the requirements in subsection (3).

(6) Where in respect of any land applied for under subsection (2) there is a development approval granted to the registered proprietor and the acquisition is not for the purpose of public utility, the State Authority shall not consider the application, and in every such case the Land Administrator shall reject the application.

[8] On the issue of 'land grab' the respondents were quick to 'point out' to us that in consequence of the appellants' failure to develop the land according to the time frame the land had to be acquired for 'public good' and the development project continued through the seventh defendant. The respondents assert that it was a bona fide exercise for public good.

[9] Learned counsel for the appellants has summarised the cause of action as follows:

In summary, the cause of action as pleaded by the appellants against the respondents in their Statement of Claim are as follows:

(a) Misfeasance in public office;

(b) Declaratory reliefs to declare the actions taken by the respondents are contrary to the provisions of the relevant statutes and therefore the actions taken are illegal;

(c) Declaratory reliefs to declare the actions taken by the respondents which are illegal and tainted with mala fide and therefore the actions taken are null and void and of no legal effect;

(d) The sixth respondent (state Government of Selangor) is vicariously liable for the acts of the fourth and fifth respondents (Menteri Besar Negeri Selangor and Tan Sri Dato' Abdul Khalid bin Ibrahim, respectively);

(e) Claim for damages.

A And the appellants' attempted to demonstrate the purported blatant abuse of power by the fifth respondent to anchor the complaint in misfeasance proceedings.

[10] Learned counsel on this issue, inter alia, submitted as follows:

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What amounts to a tort of misfeasance in public office is clearly explained in the text book *The Law of Tort*, (2nd Ed), LexisNexis Butterworths at p 926 para 17.46 which states:

> C Misfeasance in public office consists of a purported exercise of some power or authority by a public officer otherwise than in honest attempt to perform the functions of his office, whereby loss is caused to a claimant. There are two limbs to the tort. The first covers situations where the exercise of a public power is specifically intended to injure the claimant (this is the 'targeted malice' limb). The second covers situations where a public officer D acts in the knowledge that he has no power to do the act complained and that the act will probably cause loss to the claimant (that is the 'illegality limb'). In both types of case the respondent can be said to have acted in bad faith. The targeted malice limb involves bad faith in the sense of acting for an improper or ulterior motive. The illegality limb involves bad faith in that the respondent does not have an honest belief that his act is lawful. The E essence of the cause of action as a whole is therefore a deliberate and dishonest wrongful abuse of the powers given to a public officer.

The background facts relating to the development of the tort of misfeasance in public office is explained at pp 926-927 para 17.47 of the aforesaid textbook:

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> Although misfeasance has been described as 'well-established', the popularity of the cause of action has ebbed and flowed over the years since its inception. The origins of the tort are generally traced back to *Ashby v White*, where the claimant brought an action on the case against a returning officer who had unlawfully denied him the opportunity to cast his vote at a G Parliamentary election. The majority in the Kings' Bench held that the claimant's action must fail, but a strong dissent by Holt CJ was upheld by the House of Lords and the claimant was awarded damages. In *Ashby v White* itself the requirement of malice was not emphasised, but later cases confirmed that bad faith on the respondent's part was a central element of H the emerging tort. By the early 20th century, the cause of action appears almost to have died out, a decline exemplified by *Davis v Bromley Corpn*, where a Court of Appeal oblivious to the earlier authorities held that malicious refusal by a local authority to sanction building works did not give rise to a private law right of action for damages. The revival of I misfeasance in public office began with two Commonwealth cases decided in 1959, *Farrington v Thomson* and *Roncarelli v Duplessis*. Soon after, the Privy Council paved the way for the revival of the tort in English law by holding that *Davis v Bromley Corpn* did not rule out the possibility of an award of damages where a local authority was accused of maliciously refusing to issue a cinema license. However, as late as 1979 misfeasance was

> described by one commentator as 'virtually an academic curiosity', and it was only the mid-1980's, with the decision of the Court of Appeal in *Bourgoin SA v Ministry of Agriculture* that the true renaissance of the cause of action began. The roots of this renaissance lie in the upsurge in litigation against public authorities over the last two decades. Although negligence is still by far the most popular cause of action in these circumstances, a plea of misfeasance in public office may prove fruitful where the restrictions placed on negligence recovery are likely to bite. The growing reliance on the cause of action for misfeasance culminated in a comprehensive review of the tort by the House of Lords in *Three Rivers District Council v Bank of England (No 3)*.

[11] However, learned counsel was candid in saying that similar provision like ss 5 and 6 of the Government Proceedings Act 1956 (GPA 1956) which limits the scope of misfeasance proceedings in Malaysia is not available in England.

[12] Learned counsel for the respondents had filed a meticulous submission to justify why the appeal should be dismissed. And the said submission has merits. Inter alia, learned counsel said:

(i) The appellant has no cause of action as pleaded as the Menteri Besar or the Land Administrator cannot be the decision maker which is vested by law on the Ruler acting on advice from the State Executive Council (see *Hamdan bin Johan & Ors v FELCRA Bhd & Ors* [2010] 3 CLJ 474).

(ii) The tort of 'Misfeasance in Public Office' has not been made out in the affidavits and is based on suspicion. In the case of *Ng Kim Moi (P) & Ors v Pentadbir Tanah Daerah Seremban, Negeri Sembilan* [2004] 3 MLJ 301, where the Court of Appeal refer to the fifth Edition of de Smith, Woolf and Jowell's *Judicial Review of Administrative Action* sets out the ingredients of the tort as follows:

> A public authority or person holding a public office may be liable for the tort of misfeasance in public office where:
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> (a) There is an exercise or non-exercise of public power, whether common law, statutory or some other source;
>
> (b) Which is either, affected by the malice towards the plaintiff or the decision maker knows that it is unlawful; and
>
> (c) The plaintiff is in consequence deprived of a benefit or suffers other loss.

[13] We have read the appeal record and the submissions of the parties in detail. We are grateful for the comprehensive submission of learned counsel. After carefully considering the submission of learned counsel for the appellant,

A we are of the considered view that the appeal must be dismissed. Our reasons, inter alia, are as follows:

(a) in the instant case the 'sting' is on the fifth defendant who is a Menteri Besar in his personal capacity. The scheme of the Land Acquisition Act 1960 does not give any powers in a personal capacity in the manner complained of against the fifth defendant. Under s 3, acquisition is done by the 'state authority'. The fifth defendant at the most is a mouth piece for the 'state authority' or its organ.

(b) the Indian Supreme Court has considered the jurisprudence relating to misfeasance in public office in several cases and had held the cause of action is available only in cases relating to 'personal misconduct'. In *Common Cause v Union of India* [1999] 6 SCC 667 on a review petition on its own decision the Supreme Court of India had considered the English case of *Three Rivers District Council v Bank of England (No 3)* [1996] 3 All ER 558, where it was held:

> (1) The tort of misfeasance in public office is concerned with a deliberate and dishonest wrongful abuse of the powers given to a public officer. It is not to be equated with torts based on an intention to injure, although, as suggested by the majority in *Northern Territory v Mengel* (1995) 69 ALJR 527, it has some similarities to them.
>
> (2) Malice, in the sense of an intention to injure the plaintiff or a person is a class of which the plaintiff is a member, and knowledge by the officer both that he has no power to do the act complained of and that the act will probably injure the plaintiff or a person in a class of which the plaintiff is a member are alternative, nor cumulative, ingredients of the tort. To act with such knowledge is to act in a sufficent sense maliciously: see Mengel 69 ALJR 527 at 554 per Deane J.
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> (3) For the purposes of the requirement that the officer knows that he has no power to do the act complained of, it is sufficient that the officer has actual knowledge that the act was unlawful or, in circumstances in which he believes or suspects that the act is beyond his powers, that he does not ascertain whether or not that is so or fails to take such steps as would be taken by an honest and reasonable man to ascertain the true position.
>
> (4) For the purposes of the requirement that the officer knows that his act will probably injure the plaintiff or a person in a class of which the plaintiff is a member it is sufficient if the officer has actual knowledge that his act will probably damage the plaintiff or such a person or, in circumstance in which he believes or suspects that his act will probably damage the plaintiff or such a person, if he does not ascertain whether that is so or not or if he fails to make such inquiries as an honest and reasonable man would make as to the probability of such damage.
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> (5) If the states of mind in (3) and (4) do not amount to actual knowledge, they amount to recklessness which is sufficent to support liability under the second limb of the tort.

(6) Where a plaintiff establishes (i) that the defendant intended to injure the plaintiff or a person in a class of which the plaintiff is a member (limb one) or that the defendant knew that he had no power to do what he did and that the plaintiff or a person in a class of which the plaintiff is a member would probably suffer loss or damage (limb two) and (ii) that the plaintiff has suffered loss as a result, the plaintif has a sufficient right or interest to maintain an action for misfeasance in public office at common law. The plaintiff must of course also show that the defendant was a public officer or entity and that his loss was caused by the wrongful act.

(c) the learned author of Ramaswamy Iyer's *The Law of Torts* (10th Ed) on misfeasance in public office had this to say:

In 1996, two ministers in the Central Government were held liable to pay exemplary damages for misuse of the discretionary power in distribution of largesse. In *Shiv Sagar Tiwari v Union of India* (1996) 6 SCC 667, the minister was held liable to pay Rs 60 lakhs into the state exchequer for allotting shops or stalls as Minister for Housing and Urban Development to her relatives, employers and domestic servants out of the discretionary quota. Similarly, in *Common Cause v Union of India* (1996) 6 SCC 593, the Minister of State for Petroleum and Natural Gas was indicted and required to pay Rs 50 lakhs as exemplary damages. However, the Supreme Court revised its opinion, in a review petition filed by the minister in the later case. The tort of misfeasance in public office, as explained in *Three Rivers District Council v Bank of England (No 3)* [1996] 3 All ER 558, was concerned with a deliberate and dishonest wrongful abuse of the powers given to a public officer and the purpose of the tort was to provide compensation for those who suffered loss as a result of improper abuse of power. Referring to this, the Supreme Court stated that the tort of misfeasance in public office requires 'an identifiable plaintiff or claimant whose interest was damaged by the public officer maliciously or with the knowledge that the impugned action was likely to injure the interest of that person. It is the compensatory function of tort which is invoked by the plaintiff in a court and unless there is an identifiable plaintiff, there cannot be any order for compensation or damages to redress the loss caused to the plaintiff. The court quashed the allotments but held that mere allotment of petrol outlets would not constitute misfeasance. The court agreed that it was not an 'act of state' or part of the sovereign function of the state. The court also held that the 'public trust doctrine' explained in *MC Mehta v Kamal Nath* (1997) 1 SCC 388, could not be invoked in fixing criminal liability. The remark was made in reference to the awarding of exemplary damages of Rs 50 lakhs as a punishment.

(d) Unlike England or India we have further restrictions on the cause of action of 'misfeasance in public office'. Section 5 and 6 of the GPA 1956 states:

Section 5

5 Subject to this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.

Section 6

Limits of liability of the Government

6 (1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

(2) Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act, neglect or default of such officer, apply in relation to the Government as it would have applied in relation to such officer if the proceedings against the Government had been proceedings against such officer.

(3) No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

(4) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this subsection or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid.

(5) For the purposes of subsection (4) the expression 'appropriate financial officer' means, in respect of the Federal Government, the Minister of Finance, and in respect of the Government of a State, the State Financial Officer, and, in the case of the States of Sabah and Sarawak, the State Minister responsible for finance.

[14] In essence if the act of the public officer cannot give rise to a private action against the purported public officer then the government will not be

liable. For example, if a doctor in government service who is also the administrator for admission of patient, with malice refuses to admit an injured patient, who subsequently dies, not only may he be liable in negligence in his capacity but higher damages may be awarded if the cause of action is also framed in 'misfeasance in public office' requiring the government to be liable vicariously.

[15] From the facts of the instant case and taking into consideration the objections and its merits, it is difficult even to fathom how the cause of action can succeed except to say that the action is scandalous, frivolous, and vexatious and it is an abuse of process of court (see *Bandar Builders Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7).

[16] For the reasons stated above, the appeal is dismissed with costs of RM20,000 to the first to sixth respondents and RM20,000 to the seventh respondent to be paid by the appellants to the respondents.

We hereby order so.

Appeal dismissed with costs of RM20,000 to first to sixth defendants and RM20,000 to seventh defendant.

Reported by Kohila Nesan